

Appl. No.: 10/629,887
Amdt. dated 01/10/2006
RCE in Response to final Office Action of September 14, 2005

REMARKS/ARGUMENTS

The Applicant respectfully requests reconsideration of the present application in view of the above changes to the claims and the following remarks, which are responsive to the Office Action mailed September 14, 2005 and the subsequent Advisory Action mailed December 21, 2005.

I. Status of Claims

In the Advisory Action, Claims 17-24, 27-33, 35 and 36-45 (as they depend from independent Claim 17), were noted as allowed. Claims 1-6 and 36-45 (as they depend from independent Claim 1) were noted as rejected, and the objection to Claims 10-16 as dependent from rejected independent Claim 1 was maintained. Finally, Claims 7-9 were noted by the Advisory Action as withdrawn.

Applicant respectfully submits that Claim 7 has not been withdrawn and that instead it is Claims 8, 9, 23 and 24 that have been withdrawn from consideration. As a result of this response, therefore, Claims 1-24, 27-33 and 35-45 remain pending, with Claims 8, 9, 23 and 24 withdrawn from consideration.

The Advisory Action further indicates that while the proposed amendments made on December 14, 2005 will be entered, the accompanying remarks with respect to independent Claim 1 were not persuasive. In response, Applicant has amended independent Claim 1 in order to further clarify the claimed invention, and respectfully requests reconsideration of this claim, and the claims depending therefrom, in light of these amendments and the following remarks.

II. Claim Rejections

a. 35 U.S.C. §102(e) Rejection

The Official Action dated September 14, 2005 rejected Claims 1, 4-7, 17, 20-22, 25-28, 30-32, 36 and 44 under 35 U.S.C. §102(e) as anticipated by Culbert (U.S. Patent No. 6,377,648) (hereinafter "*Culbert*"). (Office Action, pg. 3, para. 2). Of these, Claims 25 and 26 were canceled in Applicant's response of December 14, 2005, and Claims 17, 20-22, 27, 28, 30-32, and 36 and 44, as they depend from independent Claim 17, were indicated as allowed by the

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Examiner in the Advisory Action of December 21, 2005. Claims 1, 4-7 and 36 and 44, as they depend from independent Claim 1, therefore, remain rejected as anticipated by *Culbert*.

Applicant respectfully submits that these claims are not anticipated by *Culbert* and, therefore, respectfully requests that the rejection of these claims be withdrawn.

In particular, reference is made to Independent Claim 1, which is reproduced below, as amended, for the Examiner's convenience.

1. (currently amended) A device for dispensing one or more articles, comprising:

a housing; and

a lower plurality of blades cooperating to define an exit aperture from said housing, said lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied for singulating articles falling through said exit aperture, wherein the size of the exit aperture defined by the lower plurality of blades is determined based on one or more dimensions associated with the articles, such that the size of the exit aperture defined by the lower plurality of blades is capable of being set prior to dispensing of the articles.

Applicant respectfully asserts that *Culbert* does not teach or suggest a "lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied for singulating articles falling through said exit aperture, wherein the size of the exit aperture defined by the lower plurality of blades is determined based on one or more dimensions associated with the articles, such that the size of the exit aperture defined by the lower plurality of blades is capable of being set prior to dispensing of the articles." (Applicant's amended Claim 1).

As noted in the previous response, *Culbert* discloses a pill counting machine having three pill rotors "capable of rotating at predetermined synchronized speeds in order to sort the pills into pill bottles." (*Culbert*, Col. 1, lns. 62-64).

According to *Culbert*,

During operation, the pill is placed in the pill receiving portion 22 of the funnel 20 (along with other pills). As the pill reaches the opening 26 of the neck portion 24, the pill will either (1) fall into a hole 36 of the first rotor 30 positioned directly

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underneath or (2) contact a top interhole surface 38 of the first rotor 30, thereby remaining in the neck portion 24 of the funnel 20 until a hole 36 is positioned directly underneath as the first rotor 30 continues to rotate. When the pill falls into the hole 36, the top surface 42 of the second rotor 40 prevents the pill from falling further. As the first rotor 30 continues to spin, the pill is carried in the hole 36 of the first rotor 30 *until the hole is aligned with the single orifice 46 of the second rotor 40*. At that point, the pill falls from the hole 36 of the first rotor 30 into the single orifice 46 of the second rotor. At the same instance, the top interopening surface 52 of the third rotor surface 58 is directly below the single orifice 46 of the second rotor 40. As the third rotor 50 continues to rotate, *the single orifice 46 of the second rotor 40 is vertically aligned with a chamber 56 opening in the third rotor 50*, permitting the pill to fall through the opening into a chamber 56 of the third rotor 50. The pills may then be removed using the trap door 55.

(*Id.* at Col. 4, ln. 63 – Col. 5 ln. 18, *emphasis added*).

While the Applicant does not agree with the position taken by the Official Action that the three pill rotors 30, 40 and 50 of *Culbert* are equivalent to the lower plurality of blades of the claimed invention, assuming this to be the case, the “exit aperture” would necessarily be the chamber 56 opening in the third rotor 50 since this is the opening into which the pill is finally received and from which the pill ultimately exits the pill counting machine upon opening of the trap door 55 (*See Culbert*, Col. 5, lns. 13-18). Applicant again asserts that nothing in *Culbert* suggests that the size of this chamber is anything other than fixed. Further, *Culbert* does not teach or suggest the three pill rotors being movable in a manner that would enable the size of the chamber in the third rotor to be varied.

Applicant further respectfully submits (still assuming that the chamber of the third pill rotor comprises the exit aperture) that *Culbert* likewise does not teach or suggest the size of the chamber being “determined based on one or more dimensions associated with the articles” being dispensed, as recited in Applicant’s Claim 1. By contrast, *Culbert* makes no mention whatsoever as to the size of the chamber.

Alternatively, it may be contended that the combination of the openings in the three rotors make up the exit aperture. As noted above and in Applicant’s previous response, Applicant submits that this contention is improper, as the pill is retained in and eventually exits from the chamber in the third rotor alone, regardless of the path through the openings in the other

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rotors that the pill has taken. In fact, the first and second rotors may have rotated out of alignment with the chamber in the third rotor such that the openings in the respective rotors are not aligned at the time that the trap door is opened and the pill is removed from the chamber in the third rotor, such that the combination of the openings in the three rotors could not logically be considered the exit aperture, i.e., the aperture from which the pill exits. However, even assuming this contention to be the case (which Applicant expressly does not), Applicant again respectfully asserts that *Culbert* does not teach or suggest the three pill rotors being movable in a manner that would enable the size of that combination of openings to be varied as recited by independent Claim 1.

As described by *Culbert*, the pill falls from the funnel through the chamber 56 when the hole 36 of the first rotor 30 "is aligned with the single orifice 46 of the second rotor 40" and then when the "single orifice 46 of the second rotor 40 is vertically aligned with a chamber 56 opening." The size of the "exit aperture" would, therefore, be the size of the smallest of the three openings – 36, 46 and 56 – when they are "aligned." In particular, as described by *Culbert*, as the rotors rotate and the pill falls from one to the other, the hole in the top rotor is always, at some point, aligned with the hole/chamber of the bottom rotor. The size of the opening is, therefore, always going to ultimately be the size of the smallest of those holes. *Culbert* does not teach or suggest the pill rotors being movable in a manner with respect to each other that would enable the size of the smallest of the three openings to be varied and, instead, the size of the smallest opening is fixed and remains constant.

In addition to the foregoing, Applicant further submits that *Culbert* does not teach or suggest the size of the combination of these openings being "determined based on one or more dimensions associated with the articles" being dispense, as recited in Applicant's Claim 1. By contrast *Culbert* teaches that "[t]he holes 36 [in the first pill rotor 30] range from 0.5 to 2.0 cm in diameter and are preferably 1.0 cm in diameter." (*Culbert*, col. 2, lns. 57-58). *Culbert* likewise teaches that "[t]he orifice 46 [in the second pill rotor 40] ranges from 0.5 to 2.0 cm in diameter and are preferably 1.0 cm in diameter." (*Id.* at col. 3, lns. 36-38). As noted above, no mention is made as to the size of the chamber in the third pill rotor 50. *Culbert* makes no reference to the

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dimensions of the pill being dispensed by the pill counting machine 10, let alone to the size of any of the holes/chambers in the respective pill rotors being dependent upon such dimensions.

Finally, Applicant further submits that *Culbert* does not teach or suggest that "the size of the exit aperture defined by the lower plurality of blades is capable of being set prior to dispensing of the articles." (Applicant's Claim 1). As described above, during operation of the pill counting machine of *Culbert*, the pill rotors 30, 40, and 50 rotate with respect to each other in order to allow the pill to first fall through a hole in the first rotor, where it remains as the second rotor continues to rotate with respect to the first, until the hole in the first aligns with the orifice of the second, and then to fall through this orifice, where it again remains as the third rotor continues to rotate with respect to the second, until the orifice aligns with the chamber of the third rotor. Assuming that these pill rotors constitute the lower plurality of blades (which Applicant does not concede) and that the exit aperture is, therefore, defined by the combination of holes/chambers in these three rotors, it is clear that the size of the exit aperture is not "set prior to dispensing of the articles," since the rotors, and therefore the holes/chambers, continue to move with respect to one another throughout operation.

Based on the foregoing, Applicant respectfully asserts that Independent Claim 1 is not anticipated by *Culbert* and, therefore, requests that the rejection of Claim 1 under §102(e) be withdrawn.

Claims 4-7, 36 and 44 depend from independent Claim 1 and include all of the recitations of that claim plus additional recitations that further distinguish the art applied in the rejection. Thus, for at least the reasons set forth above with respect to independent Claim 1, it is submitted that dependent Claims 4-7, 36 and 44 are further not anticipated by *Culbert*. Applicant respectfully requests, therefore, that the rejection of dependent Claims 4-7, 36 and 44 under 35 U.S.C. §102(e) similarly be withdrawn.

b. 35 U.S.C. §103(a)

The Office Action further rejected dependent Claims 2, 3, 18, 19 and 38-42 under 35 U.S.C. §103(a) as unpatentable over *Culbert* in view of *Bartur* (U.S. Patent No. 6,263,259) (hereinafter "*Bartur*"). (Office Action, pg. 5, para. 5). As noted above, Claims 18, 19 and 38-

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42, as they depend from Claim 17, were noted as allowed in the Advisory Action. As a result, only Claims 2, 3 and 38-42, as they depend from Claim 1, remain rejected under §103(a).

As discussed above, *Culbert* fails to teach or suggest a "lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied for singulating articles falling through said exit aperture, wherein the size of the exit aperture defined by the lower plurality of blades is determined based on one or more dimensions associated with the articles, such that the size of the exit aperture defined by the lower plurality of blades is capable of being set prior to dispensing of the articles."

Bartur likewise fails to teach this element of independent Claim 1. In fact, the Office Action cites *Bartur* for a different purpose. In particular, the Examiner cites *Bartur* for the teaching of a device comprising a unique RFID tag and a memory device for storing information. (*Id.*). The cited references, therefore, even if combined, do not teach or suggest all of the recitations of independent Claim 1. Because dependent Claims 2, 3 and 38-42 (as they depend from Claim 1) include all of the recitations of Claim 1 plus additional recitations, the references further do not teach or suggest dependent Claims 2, 3 and 38-42 for at least the same reasons.

For at least these reasons, applicant respectfully requests that the rejection of Claims 2, 3, and 38-42, as they depend from Claim 1, under 35 U.S.C. §103(a) be withdrawn.

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III. Conclusion

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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